



Appeal Decision

Site visit made on 23 April 2025

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 June 2025

Appeal Ref: APP/V1260/W/24/3351534

113 Bargates, Christchurch BH23 1QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Long of JKL Ltd against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref is 8/24/0040/FUL.
 - The development proposed is alterations and extension to the ground floor and change of use from a shop (class E) to two flats (class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issues

2. During the appeal, correspondence from Natural England confirmed that formal advice has recently been given to the Council regarding the recreational pressure being placed on the New Forest's European designated sites. In light of this, Natural England has advised that any additional residential development within 13.8km of the New Forest should not be permitted without first securing appropriate mitigation. As the main parties have provided responses to this issue, neither party would be prejudiced by my consideration of the effect of the proposal on the New Forest in the determination of this appeal.
3. Consequently, the main issues are:
 - the effect of the proposal on the vitality and viability of the Bargates Secondary Shopping Frontage (BSSF);
 - whether the proposal would be likely to have a significant effect on the integrity of the River Avon Special Area of Conservation (SAC);
 - whether the proposal would be likely to have a significant effect on the integrity of the New Forest, including its SAC and Special Protection Area (SPA); and
 - whether the proposal would be likely to have a significant effect on the integrity of the Dorset Heathlands, including its SPA and the Dorset Heaths SAC.

Reasons

Bargates Secondary Shopping Frontage

4. The appeal site comprises the ground floor of a mid-terraced property located within the BSSF, as defined by Saved Policy CH3 of the Core Strategy¹ and where Saved Policy CH7 permits the change of use of existing non-residential premises in certain circumstances. This provides some flexibility for commercial premises to change its use, alongside the absence of a prescribed limit to the number of non-retail uses acceptable within a Secondary Shopping Frontage. However, the circumstances permissible within Policy CH7 do not include a change to a residential use.
5. The appeal property is located in the centre of a continuous frontage of commercial uses, including food takeaways, shops, a barber and a funeral director. No premises within this row have residential development on the ground floor frontage, although residential uses are located within the floors above. The proposed conversion of the ground floor of the property into two flats would, therefore, result in the loss of a commercial use, leading to a reduction in the amount of active shopping frontage within the BSSF, contrary to Saved Policy CH7.
6. Although vacant at the time of my site visit, the signage on the property indicates that it was last used as a food takeaway. Nonetheless, I have limited substantive evidence before me confirming that the unit has been empty for the two years indicated by the appellant. Nor has it been demonstrated that the non-residential use of the unit is no longer viable.
7. I conclude that the proposed change of use would harm the vitality and viability of the BSSF, contrary to the provisions of Saved Policy CH7 of the Core Strategy which seeks to maintain an active shopping frontage within the BSSF.
8. As Saved Policy CH2 of the Core Strategy relates to development within the Town Centres, it is not determinative in decisions relating to properties located outside the designated Town Centres, such as the appeal site.

River Avon

9. The River Avon SAC is a European designated site which supports a diverse range of aquatic plants and provides feeding habitats for invertebrate and fish species. The protection and maintenance of these habitats and species is the core conservation objective for the River Avon SAC. One of the main issues preventing this objective from being met relates to the increase in wastewater being discharged into the river, including pollutants and nutrients such as nitrates and phosphates, which affect water quality and threaten the aquatic ecosystem.
10. An increase in the number of people staying overnight in the area would increase the amount of wastewater being discharged into the river. It is therefore likely that the proposal, taken both in isolation and cumulatively, would have a significant adverse effect on the integrity of the River Avon SAC.
11. Although the upgrading of the Christchurch Waste Water Treatment Works by 2030 will reduce the nutrient load affecting the River Avon SAC, it will not be eliminated completely. Therefore, the removal of the equivalent phosphates from the river resulting from additional overnight accommodation will be required prior to the upgrade works, with a smaller amount afterwards. To secure this, the main

¹ Christchurch and East Dorset Local Plan Part 1 – Core Strategy (the Core Strategy)

parties have proposed the use of a pre-commencement condition which would require credits to be purchased to offset the agreed nutrient load that would be generated by the proposal.

12. The PPG² sets out that the use of a negatively worded condition requiring a planning obligation or other agreement to be entered into before development can commence may be appropriate in exceptional circumstances. Such circumstances include where there is clear evidence that the delivery of the development would otherwise be at serious risk or it relates to a complex scheme. In this case, the provision of two dwellings on a small site does not represent an exceptional circumstance which justifies the use of the aforementioned condition.
13. While there may be credits available at Bickton Fish Farm and Britford Trout Farm for purchase, I have no further evidence before me confirming that an appropriate mechanism, such as a legal agreement, is in place to secure the necessary mitigation contribution, were I to allow the appeal.
14. As the competent authority in this matter, I conclude that the proposal would be likely to have a significant effect on the integrity of the River Avon SAC, contrary to the requirements of the Habitat Regulations³. It would also conflict with Saved Policy ME1 of the Core Strategy which aims to protect, maintain and enhance the conditions of nature conservation sites, such as the River Avon SAC.

New Forest

15. The conservation interest of the New Forest relates to the various aquatic, heathlands, meadows and bog woodland areas it comprises which provide habitats for a diverse range of vegetation, insects and invertebrates. Significant pressure from those living close to and accessing the New Forest for recreation leads to disturbance and trampling. In addition, adverse impacts to the habitats and species of the New Forest result from an increase in nutrients discharging into its hydrological catchment.
16. The protection and maintenance conservation objective of the European designated sites in the New Forest would, consequently, be placed under further pressure from an increase in the number of people living within its catchment. It is therefore likely that the proposal, taken both in isolation and cumulatively, would have a significant adverse effect upon the integrity of the New Forest.
17. Natural England indicates a per dwelling fee would be suitable to provide the level of mitigation/avoidance as a result of the proposal, based on the New Forest Strategic Management and Monitoring Strategy (New Forest SAMM). However, whilst in an advanced state, the New Forest SAMM is yet to be adopted and, consequently, there is no mechanism in place enabling the Council to accept such payments or transfer them to an appropriate fund. Furthermore, it is uncertain if the New Forest SAMM will be adopted as currently drafted, including the final mitigation fee per dwelling. As such, I cannot be certain that Regulation 122 of the CIL Regulations⁴ and the Framework's⁵ planning obligation tests, including the contributions sought being necessary, related directly to the development and fairly related in scale and kind, have been met.

² Planning Practice Guidance

³ Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations)

⁴ Community Infrastructure Levy Regulations 2010 (the CIL Regulations)

⁵ National Planning Policy Framework (the Framework)

18. Notwithstanding this, it has not been demonstrated that exceptional circumstances exist in support of the use of a pre-commencement condition to secure the necessary mitigation, as similarly concluded above regarding the River Avon SAC.
19. Therefore, as the competent authority on this matter, I conclude that the proposal would be likely to have a significant effect on the integrity of the New Forest, contrary to the requirements of the Habitat Regulations and Saved Policy ME1 of the Core Strategy.

Dorset Heathlands

20. The appeal site also lies within 5km of the Dorset Heathlands, also a European designated site. Its conservation interest relates to the extensive network of lowland heaths present which support a variety of priority habitats and species of birds and reptiles. As set out in the Council's SPD⁶, the overarching conservation objective of the Dorset Heathlands is to protect these habitats.
21. In a similar way to the New Forest, significant pressures from the recreational use of the Dorset Heathlands, leads to wildfires and damage to plants, soils and, in turn, the habitats supported, making the conservation objective of the area challenging to maintain. In addition, the introduction of incompatible plants and animals, loss of vegetation and soil erosion, and disturbance by humans and their pets has an adverse effect on the heathland ecology.
22. As the proposal comprises residential development it would add to the number of people living in the vicinity of this designated site which in turn would result in greater urban pressures on the area. It is therefore likely that the proposal, taken both in isolation and cumulatively, would have a significant adverse effect on the integrity of the Dorset Heathlands.
23. The approach to avoiding or mitigating these significant effects, as set out in the SPD, is through securing contributions towards the Dorset Heathlands SAMM. These contributions are calculated on a per dwelling basis plus an administrative fee and paid either prior to the grant of planning permission as an upfront payment or prior to commencement if secured by an appropriate legal agreement. The SPD, therefore, provides sufficient information for me to conclude that the obligations sought are necessary, related directly to the development and fairly related in scale and kind. As such it would accord with the provisions of Regulation 122 of the CIL Regulations and the Framework's planning obligation tests.
24. The signed Unilateral Undertaking (UU), submitted during the appeal, obligates the appellant to pay an agreed sum to the Council on the date the agreement was signed towards the SAMMs. I am therefore satisfied that the UU secures the necessary contributions which would enable the delivery of mitigation sufficient to address the level of harm likely to be caused by the proposal.
25. Consequently, as the competent authority, I conclude that the proposal would not be likely to have a significant effect on the integrity of the Dorset Heathlands, meeting the requirements of the Habitat Regulations and in accordance with Saved Policy ME1 of the Core Strategy.

⁶ The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD)

Other Matters

26. The proposal would provide social and economic benefits from the construction works and the occupation of two flats. The efficient use of the site within an area that is accessible to a range of local services and facilities, including public transport routes, would be beneficial from an environmental perspective. Nonetheless, given the scale of works, these benefits would be small.
27. My attention has been drawn to other properties within the BSSF that have been converted at ground floor level to residential use. However, these are located either on the other side of the road where there are fewer retail units or in other parts of the BSSF where the mix of commercial uses is more extensive and interspersed with residential development. In the case of the site's neighbouring property at 115 Bargates, although part converted to residential accommodation on the ground floor, the front section of the property remains in commercial use, maintaining the continuous shopping frontage. Based on the evidence before me, the examples of other properties in the BSSF represent materially different circumstances to the appeal scheme and, as a result, do not justify the grant of planning permission in this case.
28. Reference has been made to Schedule 2, Part 3, Class MA of the GPDO⁷ which permits the change of use of a building and any land within its curtilage from a use falling within Class E of the UCO⁸ to a use falling within Class C3 (dwellinghouses). This requires the developer to apply to the Council for a determination as to whether prior approval is required, provided the use of the building, as set out at Class MA.1(b), fell within one of a specific list of classes (including Class A3 – food and drink) for a continuous period of at least two years prior to the date of the application for prior approval. Given the property was vacant at the time of my site visit, it has not been demonstrated that the requirements of Class MA.1(b) have been satisfied. In any event, this appeal relates to an application for full planning permission and, therefore, requires the proposal to be determined against the development plan.

Planning Balance

29. The Council is unable to demonstrate a five-year supply of deliverable housing sites in accordance with the Framework, with the latest position confirmed to be 2.1 years. The net gain of two dwellings as a result of the proposal would, therefore, be valuable in supporting the Framework's objective of significantly boosting the supply of housing where there is a shortfall. Although the proposal's contribution would be small, the shortfall in the area is significant, with a great need for smaller properties. I therefore attribute great weight to this benefit.
30. Nevertheless, the proposal would harm the vitality and viability of the BSSF, contrary to Saved Policy CH7 of the Core Strategy which is broadly consistent with the Framework's approach to providing a positive strategy for the future of shopping areas. I have also found the proposal would be likely to have a significant effect on the integrity of the River Avon SAC and the New Forest SPA and SAC. This conflicts with Saved Policy ME1 of the Core Strategy which adopts similar principles to the Framework regarding the protection of the conservation status of European designated sites. As a result, the proposal conflicts with the

⁷ The Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO)

⁸ The Town and Country Planning (Use Classes) Order 1987 as amended (UCO)

development plan when considered as a whole and I attach significant weight to the associated harm which would arise.

31. Given the housing land supply position, paragraph 11d of the Framework and the presumption in favour of sustainable development is relevant. Notwithstanding this, the Framework's presumption does not apply where the application of policies therein that protect areas of particular importance provide a strong reason for refusing the development. This includes policies relating to habitat sites such as SPAs and SACs. Given the likely significant effect on the integrity of the SPA and the SACs identified above, a strong reason for refusing the proposal has been established. Consequently, the presumption in favour of sustainable development does not apply in this case.

Conclusion

32. I conclude that the proposal is contrary to the development plan as a whole and material considerations, including the provisions of the Framework, do not indicate that the proposal should be determined other than in accordance with it.
33. For the reasons set out above, having regard to all relevant matters raised, I conclude that the appeal should be dismissed.

Juliet Rogers

INSPECTOR